

## **REMARKS**

The Office Action dated June 5, 2009 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1-11 and 15-23 are pending in this application. The Office Action indicates that claims 12-14 are withdrawn from consideration. However, claims 12-14 were canceled in the Response filed May 4, 2007. Claims 1 and 8 are amended herein. Support for the amendments can be found in the originally filed application at, for example, FIGS. 2 and 3. Applicants submit that no new matter has been introduced.

### **Rejections under 35 U.S.C. § 102**

Claims 1, 2, and 4-7 stand rejected under 35 U.S.C. § 102(e) as being anticipated by USPN 6,969,379 to Aboul-Hosn et al. (hereinafter, "Aboul-Hosn"). Claims 8-11, and 15-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 5,395,316 to Martin (hereinafter, "Martin"). Applicants respectfully traverse these rejections.

Independent claim 1 recites, *inter alia*, "the first passageway having a first cross-sectional area from the distal end of the body to the second passageway and a second cross-sectional area from the second passageway to the proximal end of the body, the first cross-sectional area larger than the second cross-sectional area, the second cross-sectional area substantially the same as an outer wall of the inner lumen."

Aboul-Hosn teaches an intravascular cannulation apparatus that has a first channel 57 with the same cross-sectional area on both sides of a second channel 59. Further, there is no disclosure in Aboul-Hosn of a second cross-sectional area substantially the same as an outer wall of the inner lumen. In contradistinction to Aboul-Hosn, claim 1 includes having a first cross-sectional area from the distal end of the body to the second passageway and a second cross-sectional area from the second passageway to the proximal end of the body, the first cross-sectional area larger than the second cross-sectional area, the second cross-sectional area substantially the same as an outer wall of the inner lumen.

Accordingly, Aboul-Hosn fails to show each and every element recited in independent claim 1, and thus independent claim 1, and claims 2-7 depending therefrom, are patentable over Aboul-Hosn. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

Independent claim 8 recites, *inter alia*, “the first passageway having a first cross-sectional area from the distal end of the body to the second passageway and a second cross-sectional area from the second passageway to the proximal end of the body, the first cross-sectional area larger than the second cross-sectional area.”

Martin teaches a triple lumen catheter formed from a main body 22 with a “central lumen 48 defined by a pair of parallel walls 50, 52.” (Martin, col. 4, ll. 1-4, and FIGS. 2, 3, and 5). The claimed insert, although not cited with specificity, is believed to be the combination of the Martin first and second mandrels 58, 60. However, neither first or second mandrel of Martin is shown or described to have a first cross-sectional area larger than a second cross-sectional area as claimed. That is, to the extent that Martin shows differing cross-sectional areas in the first and second mandrels 58, 60 (*see* FIG. 5), the smaller cross-sectional area is at the distal end, rather than the proximal end.

Accordingly, Martin fails to show each and every element recited in independent claim 8, and thus independent claim 8, and claims 9-11 depending therefrom, are patentable over Martin. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

Independent claim 15 recites, *inter alia*, “an insert including a first leg positioned in a proximal opening of the first member; a second generally tubular member positioned coaxially in a lumen of the first member and a first channel of the insert; and a hub disposed over the insert and a proximal end of the first member.

As discussed above, Martin is directed to a triple lumen catheter with side-by-side lumens, rather than coaxial lumens. The Office Action alleges that Martin shows and describes an insert

including a first leg positioned in a proximal opening of the first member as claimed. Although the Office Action does not cite with specificity support for this element, as set forth above, Applicants assume from the reading of Martin that one of the first and second mandrels 58, 60 of Martin was intended. However, even assuming *arguendo* that Martin teaches the claimed insert, it is clear from the Martin disclosure and basic structure of the Martin side-by-side catheter that there is no showing or description of “a second generally tubular member positioned coaxially in a lumen of the first member and a first channel of the insert,” as claimed. In fact, Martin specifically states that tubes 26, 28 (the only possible structures to support the claimed second generally tubular member) are engaged over the mandrels so that the mandrels can later be removed. (Martin, col. 4, ll. 22-28). Thus, Martin fails to show or describe both a second generally tubular member positioned coaxially in a lumen of the first member and a second generally tubular member positioned coaxially in a lumen of a first channel of the insert.

Accordingly, Martin fails to show each and every element recited in independent claim 15, and thus independent claim 15, and claims 16-23 depending therefrom, are patentable over Martin. Therefore, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 102.

### **Rejections under 35 U.S.C. § 103**

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Aboul-Hosn. Without conceding the allegations made in the Office Action, Applicants submit that claim 3 depends from patentable independent claim 1, in view of the above, and is therefore patentable. Accordingly, Applicants respectfully request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 103.

### **Conclusion**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is

determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

It is noted that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between the cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein should not be construed to prejudice or foreclose future consideration by Applicants of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner and/or the merits of additional or alternative arguments.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-2191 referencing docket no. 101672.0012P. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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